SUPREME COURT, U.S.

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 221)

Supreme Court of the United States

OCTOBER TERM, 1952

No. 26

AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA

FILED MARCH 12, 1952

Probable jurisdiction noted April 21, 1952

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VOL. I

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II

PLAINTIFFS

Plaintiff, American Trucking Associations, Inc., is a voluntary non-profit corporation organized under the laws of the District of Columbia with general offices at 1424 Sixteenth Street, N. W., Washington 6, D. C., and it is the national organization of the trucking industry and is owned and maintained by said industry, and appeared and participated in the proceedings before the Interstate Commerce Commission involving matters herein complained of, on its own behalf and on behalf of its members, who constitute a class too numerous to individually name and for whom it customarily appears in proceedings before the Interstate Commerce Commission and before the courts.

Plaintiff, National Automobile Transporters Association, is a non-profit corporation organized and existing under the laws of the State of Michigan with general offices located in the City of Detroit, Michigan. It is a voluntary association of more than 100 motor common carriers engaged in the transportation of property in interstate commerce under certificates of public convenience and necessity granted by the Interstate Commerce Commission and each of its carrier members was made a respondent by the Commission's initial order of investigation of lease and interchange practices of motor carriers. Plaintiff has heretofore appeared in this proceeding before the Commission in a representative capacity on behalf of its carrier members, has introduced into the record at public hearing witness testimony and documentary exhibits, has filed exceptions to the Examiner's proposed report, a petition for reconsideration of the Commission's final order, and briefs in support of those pleadings.

Plaintiff, Association of Highway Steel Transporters, Inc., is a non-profit corporation organized and existing under the laws of the State of Ohio with general offices located in Cleveland, Ohio. It is a voluntary association of more than 50 motor common and contract carriers engaged in the transportation of iron and steel products in [fol. 4] interstate commerce under certificates of public convenience and necessity or permits granted by the Inter-

state Commerce Commission and each of its carrier members was made a respondent by the Commission's initial order of investigation of lease and interchange practices of motor carriers. Plaintiff has heretofore appeared in this proceeding before the Commission in a representative capacity on behalf of its carrier members, has filed exceptions to the Examiner's proposed report, a petition for reconsideration of the Commission's final order, and briefs in support of those pleadings.

Plaintiff, Malone Freight Lines, Inc. is a corporation organized and existing under the laws of the State of Alabama with general offices in Birmingham, Alabama, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-75840.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to approximately $2,543,479. During this period plaintiff's vehicles operated a total of 7,610,785 miles all of which was performed in leased vehicles.

Plaintiff, Baggett Transportation Company, is a corporation organized and existing under the laws of the State of Alabama with general offices in Birmingham, Alabama, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of the said Act, plaintiff was re-
[fol. 5] quired to and did obtain from the Commission and

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

Civil Action No. 6758

AMERICAN TRUCKING ASSOCIATIONS, INC., Washington 6, D. C.; NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, Detroit, Michigan; ASSOCIATION OF HIGHWAY STEEL TRANSPORTERS, INC., Cleveland, Ohio; MALONE FREIGHT LINES, INC., Birmingham, Alabama; BAGGETT TRANSPORTATION COMPANY, Birmingham, Alabama; COMMERCIAL CARRIERS, INC., Detroit, Michigan; HIGHWAY EXPRESS, INC., Memphis, Tennessee; GORDONS TRANSPORTS, INC., Memphis, Tennessee; GEO. F. ALGER COMPANY, Detroit, Michigan; MICHIGAN MOTOR FREIGHT LINES, INC., Detroit, Michigan; AUTOMOBILE SHIPPERS, INC., Detroit, Michigan; SERVICE TRANSPORT COMPANY, Cleveland, Ohio; UNITED TRANSPORTS, INC., Oklahoma City, Oklahoma; TOMPKINS MOTOR LINES, INC., Nashville, Tennessee; WATKINS MOTOR LINES, INC., Thomasville, Georgia; COATS MOTOR TRANSFER COMPANY, INC., Jacksonville, Florida; GEORGIA-FLORIDA MOTOR EXPRESS, INC., Jacksonville, Florida, Plaintiffs,

vs.

UNITED STATES OF AMERICA and the INTERSTATE COMMERCE COMMISSION, Defendants

Part I

BILL OF COMPLAINT TO SET ASIDE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed August 21, 1951

I

JURISDICTION

The action is one to enjoin, set aside or annul an order of the Interstate Commerce Commission and arises un- [fol. 3] der the provisions of the United States Code, Title 28, Section 1336, 1398, 2284, and 2321 to 2325 inclusive.

of part II of the Act be, and they are hereby, made respondents to this proceeding.

It is further ordered, That the proceeding be, and it is hereby, assigned for hearing before Examiner C. Evans Brooks, at 9:30 o'clock a. m., United States standard time, on the 19th day of April, A. D. 1948, at the office of the Interstate Commerce Commission, Washington, D. C.

It is further ordered, That any person desiring to be notified of any change in the time or place of the said hearing (at his own expense, if telegraphic notice becomes necessary) shall inform the Interstate Commerce Commission, Washington, D. C., to that effect by notice which must reach the Commission on or before February 16, 1948.

And it is further ordered, That a copy of this order be served upon each of the respondents and that notice to the general public be given by posting a copy of it in the office of the Secretary of the Commission at Washington, D. C., and by filing it with the Division of the Federal Register.

By the Commission, division 5.

W. P. Bartel, Secretary. (Seal.)

[fol. 22] Rules Proposed for Consideration, Governing the Practices Resulting from Agreements, Contracts, or Leases Entered into by Authorized Carriers of Property for the Purpose of (1) Augmenting their Equipment, (2) Interchange of Equipment, and (3) Renting of Vehicles or Equipment to Private Carriers or Shippers.

Rule 1. Definitions. a. Authorized carrier.—A person or persons authorized by the Interstate Commerce Commission to engage in transportation of property as common or contract carriers under the provisions of Sections 206, 207, 208, or 209 of Part II of the Interstate Commerce Act.

b. Equipment.—A motor vehicle, straight truck, tractor, semi-trailer, full trailer, or a combination tractor and semi-trailer and combination straight truck and full trailer.

c. Interchange of equipment.—The physical exchange

is the holder of certificate of public convenience and necessity numbered MC-76177.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to approximately $3,700,000. During the same period plaintiff's vehicles operated a total of 7,936,575 revenue miles of which 4,042,403 revenue miles or 50.9% were performed in leased vehicles.

Plaintiff, Commercial Carriers, Inc., is a corporation organized and existing under the laws of the State of Michigan, with general offices in Detroit, Michigan, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-43038.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to a year. The amounts paid by plaintiff to individual lessors is based on a fixed percentage of the total gross revenue derived from the use of lessor's vehicles. During the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to $17,445,848. During the same period plaintiff's vehicles operated a total of 67,922,581 revenue miles of which 45,235,984 or 66.6% were performed in leased vehicles.

Plaintiff, Highway Express, Inc. is a corporation organized and existing under the laws of the State of Tennessee with general offices in Memphis, Tennessee, and has been

[fol. 6] at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-1362.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to approximately $2,600,000. During the same period plaintiff's vehicles operated a total of 5,734,485 revenue miles of which 624,837 revenue miles or 10.9% were performed in leased vehicles.

Plaintiff, Gordons Transports, Inc., is a corporation organized and existing under the laws of the State of Tennessee with general offices in Memphis, Tennessee, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity number MC-11220.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950, plaintiff's total gross

revenue amounted to approximately $3,900,000. During the same period plaintiff's vehicles operated a total of 9,664,310 [fol. 7] revenue miles, of which 5,321,781 revenue miles or 55.1% were performed in leased vehicles.

Plaintiff, George F. Alger Company is a corporation organized and existing under the laws of the State of Michigan, with general offices in Detroit, Michigan, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-46737.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demand require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950, plaintiff's total gross revenues amounted to $9,249,645.00. Approximately $6,161,727.00 of plaintiff's total gross revenues or 66.62% was paid for the use of the vehicles under lease to plaintiff.

Plaintiff, Michigan Motor Freight Lines, Inc. is a corporation organized and existing under the laws of the State of Michigan with general offices in Detroit, Michigan, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-54435.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases

are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a [fol. 8] fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenue amounted to $7,116,000. Approximately $6,722,150 of plaintiff's total gross revenues or 94.46% was paid for the use of the vehicles under lease to plaintiff.

Plaintiff, Automobile Shippers, Inc. is a corporation organized and existing under the laws of the State of Michigan with general offices in Detroit, Michigan, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-65392.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated ~~as operating~~ conditions and traffic demands require, for periods ranging from a single trip to one year. The amounts paid by plaintiff to individual lessors is based on a fixed percentage of the total gross revenue derived from the use of the lessor's vehicles. During the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to $3,424,614.00. Approximately $3,278,210 of plaintiff's total gross revenues or 95.72% was paid for the use of the vehicles under lease to plaintiff.

Plaintiff, Service Transport Company is a corporation organized and existing under the laws of the State of Ohio, with general offices in Cleveland, Ohio, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain

from the Commission and is the holder of certificate of public convenience and necessity numbered MC-106373.

[fol. 9] In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1951 and ending June 30, 1951 plaintiff transported 201,104 tons of freight which yielded a total gross revenue of $1,505,481.00. Approximately $1,150,639.00 of plaintiff's gross revenues or 76.43% was paid for the use of the vehicles under lease to plaintiff.

Plaintiff, United Transports, Inc. is a corporation organized and existing under the laws of the State of Delaware with general offices in Oklahoma City, Oklahoma, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of the said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-71902.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangements. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenues amounted to approximately $6,128,032. During the same period plaintiff's vehicles operated a total of 29,881,586 revenue miles of which 8,774,166 revenue miles or 29.4% were performed in leased vehicles.

Plaintiff, Tompkins Motor Lines, Inc. is a corporation organized and existing under the laws of the State of Ten-

nessee with general offices in Nashville, Tennessee, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common car-
[fol. 10] rier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-20783.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehices obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1950 and ending December 31, 1950 plaintiff's total gross revenue amounted to approximately $868,004. During this period plaintiff's vehicles operated a total of 2,047,612 revenue miles all of which were performed in leased vehicles.

Plaintiff, Watkins Motor Lines, Inc. is a corporation organized and existing under the laws of the State of Florida, with general offices in Thomasville, Georgia, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-95540—sub 130 et seq.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. The amount paid to the individual lessors is based on a fixed percentage of the revenue derived from the use of the lessor's vehicles. For the period beginning January 1, 1951 and ending June 30, 1951 plaintiff's revenue derived

from trip lease operations amounted to approximately $112,833.

Plaintiff, Coats Motor Transfer Company, Inc. is a corporation organized and existing under the laws of the State [fol. 11] of Florida, with general offices in Jacksonville, Florida, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is holder of certificate of public convenience and necessity numbered MC-8753.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. During the period beginning January 1, 1951 and ending June 30, 1951 plaintiff's revenue derived from trip lease operations amounted to approximately $176,627.

Plaintiff, Georgia-Florida Motor Express, Inc. is a Florida corporation organized and existing under the laws of the State of Florida with general offices in Jacksonville, Florida, and has been at all times herein mentioned and now is engaged in operating in interstate commerce as a motor common carrier of property, subject to and in compliance with part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive). By part II of said Act, plaintiff was required to and did obtain from the Commission and is the holder of certificate of public convenience and necessity numbered MC-109455.

In the daily conduct of its business plaintiff regularly supplements its own fleet of vehicles with vehicles obtained through lease, interchange or other arrangement. Leases are negotiated as operating conditions and traffic demands require, for periods ranging from a single trip to one year. For the period beginning January 1, 1950 and ending December 31, 1950, plaintiff's total gross revenues amounted to approximately $505,114. During this period plaintiff's vehicles operated a total of 867,201 revenue miles all of

which were performed in leased vehicles. For the period beginning January 1, 1951 and ending June 30, 1951, plaintiff's revenue derived from trip lease operations amounted to approximately $317,581.

[fol. 12] III

STATEMENT OF CASE

On January 9, 1948, the Interstate Commerce Commission, Division 5, on its own motion issued a notice of proposed rule making and entered an order instituting an investigation into the lawfulness of the vehicle interchange and lease practices of motor common and contract carriers of property subject to the Commission's jurisdiction. All motor common and contract carriers of property subject to the general provisions of Part II of the Interstate Commerce Act (49 U. S. C. 301-327, inclusive), including each of the carrier plaintiffs to this action, were made respondents to the Commission proceeding. A copy of this order is attached hereto and marked Exhibit "A".

Formal hearings were held in Washington, D. C., and St. Louis, Mo. At hearing, plaintiff, American Trucking Associations, Inc., submitted for the Commission's consideration a set of rules for the regulation of vehicle interchange and lease which, after extensive hearings and conferences, were approved as reasonable by the majority of the industry. (See Appendix "E" of Exhibit "C.")

After hearing, briefs were filed by parties respondent and others; a proposed report and order by the hearing examiner was served upon the parties; exceptions and replies thereto were filed; and the Commission, Division 5, on June 26, 1950, entered an order modifying that proposed by the Examiner and prescribing rules substantially in accord with those suggested by plaintiffs, American Trucking Associations, Inc. The report of Division 5 is attached hereto and marked Exhibit "B," and the rules prescribed are set forth in Appendix "A" of Exhibit "C."

On October 30, 1950, oral argument was heard by the entire Commission and on May 8, 1951, the Commission entered its final report and order, a copy of which is attached and marked Exhibit "C." The Commission's final

order reversed and modified the order of Division 5 and prescribed rules, much more restrictive than those suggested by the industry, to become effective August 1, 1951. On July 11, 1951, plaintiffs American Trucking Associations, Inc., Washington 6, D. C.; National Automobile Transporters Association, Detroit, Michigan; Association [fol. 13] of Highway Steel Transporters, Inc., Cleveland, Ohio; Malone Freight Lines, Inc., Birmingham, Alabama; Baggett Transportation Company, Birmingham, Alabama; Commercial Carriers, Inc., Detroit, Michigan; Highway Express, Inc., Memphis, Tennessee; Gordons Transports, Inc., Memphis, Tennessee; Geo. F. Alger Company, Detroit, Michigan; Michigan Motor Freight Lines, Inc., Detroit, Michigan; Automobile Shippers, Inc., Detroit, Michigan; Service Transport Company, Cleveland, Ohio; United Transports, Inc., Oklahoma City, Oklahoma; Tompkins Motor Lines, Inc., Nashville, Tennessee; Watkins Motor Lines, Inc., Thomasville, Georgia; Coats Motor Transfer Company, Inc., Jacksonville, Florida; Georgia-Florida Motor Express, Inc., Jacksonville, Florida, and others filed petitions for reconsideration with the Commission. On July 20, 1951, the Commission postponed the effective date of its order of May 8, 1951, to September 1, 1951. Copy of the order postponing the effective date is attached hereto and marked Exhibit "D."

IV

On August 1, 1951, the Commission by order denied plaintiffs petitions for reconsideration. Copy of said order is attached hereto and marked Exhibit "E."

V

Plaintiffs through the various procedural steps referred to in the foregoing paragraphs have exhausted their administrative remedy before the Interstate Commerce Commission and the final order of the Commission (Appendix "E" of Exhibit "C") will become effective September 1, 1951, unless enjoined by this court.

VI

The order (Exhibit "A") initiating this proceeding refers to Sections 302 (a), 304 (a) (1), (2), and (6), 315, 316 (b), (c), and (e), 302 (a) and (d), and 324 of Title 49, United States Code to support its authority to conduct this investigation and to promulgate rules to regulate and control the vehicle interchange and lease arrangements entered into by motor common and contract carriers of property [fol. 14] subject to the provisions of Part II of the Interstate Commerce Act. At every stage of this proceeding before the Commission, plaintiffs challenged the jurisdiction of the Commission, contending that its authority under Part II of the Interstate Commerce Act to prescribe rules and regulations to govern leasing and interchange practices of motor carriers is limited to the extent expressly noted in Sections 304 (a) (1) and (2); 316 (c); 320; and 324 of Title 49, United States Code. The Commission in its final report and order concluded that it has virtually unlimited authority to regulate and even to prohibit customary lease and interchange practices of motor carriers (Pages 122-130 of Appendix "C") under the provisions of Sections 302 (a) and 304 (a) (6).

VII

Allegations of Error

The Commission has acted beyond and in contradiction of the terms of the statute and in excess of any power, express or implied, conferred upon it by the statute, in issuing its order of May 8, 1951.

VIII

The Commission placed an erroneous construction on the terms of Part II of the Interstate Commerce Act, in concluding (Page 128, Exhibit "C") that "* * * we have been given ample authority to regulate the leasing practices of the motor carriers subject to our jurisdiction under Part II of the Act, and to promulgate rules and regulations to be observed by the carriers under Section 204 (a) (6) * * *." (Section 304 (a) (6) of Title 49, United States Code.)

IX

If the Commission is correct in interpreting the terms of Section 304 (a) (6) as authority to regulate and prohibit leasing of vehicles by motor carriers subject to its jurisdiction, then that section of the Act is void as an unconstitutional delegation of legislative power, for it fails to provide "primary standards" or "intelligible principles" to guide the action of the Commission.

[fol. 15]

X

The Commission has contravened Article I, Section 1 of the Constitution of the United States in prescribing rules which, in effect, prohibit standard and customary practices of authorized carriers of property by motor vehicle in interstate or foreign commerce in (1) augmenting equipment, (2) interchanging of equipment, and (3) renting vehicles or equipment to private carriers or shippers.

XI

The Commission has contravened the "due process" clause of the Fifth Amendment of the Constitution of the United States and has failed to comply with the provisions of the Administrative Procedure Act, Section 1007 (b) and Section 1009 (e), Title 5, United States Code, in that the rules prescribed are based on findings of fact that are obscure and indefinite, and on conclusions that are not supported by substantial evidence of record.

XII

Plaintiffs further allege that, even conceding that the Commission has statutory authority to promulgate rules to govern safety of operation, interchange and identification of equipment, and accounting practices of motor carriers, the rules prescribed in this proceeding are in substance so unreasonable that they exceed the Commission's statutory grant of power.

XIII

Plaintiffs specifically allege that Rules 207.3 (a), (b) and (e); 207.4 (a) (1), (3), (4), (5) and (6); 207.4 (b), (f);

207.5 and all sub sections; and 207.6 (b) are unreasonable, discriminatory and arbitrary; unlawfully invade the province of carrier management; contravene the National Transportation Policy as declared in the statute; are inconsistent with the proviso contained in Sections 308 (a) and 309 (b) of Title 49, United States Code; bear no reasonable relationship to the administration of any legitimate function of the Commission; and, are repugnant to the Constitution of the United States.

[fol. 16]

XIV

Injury to Plaintiffs

Plaintiffs, except American Trucking Associations, Inc., National Automobile Transporters Association and Association of Highway Steel Transporters, Inc., further allege that they, and each of them, have a substantial pecuniary interest in the matters hereinbefore described; that the final order of the Commission (Exhibit "C") will adversely affect the conduct of their business operations; that the order of the Commission is null and void; that the order will impair plaintiffs' economic stability; that the order will invalidate contracts presently existing between plaintiffs and lessors of operating equipment; that the order will prevent plaintiffs from rendering adequate and continuous service to the public as required by the terms of their certificates and the statute; and that, unless the Commission's order is restrained, enjoined, set aside or annulled by this court, plaintiffs will suffer irreparable injury for which no adequate remedy at law is available.

Prayers for Relief

Wherefore Plaintiffs respectfully pray:

1. That in accordance with Rule 4 of the Federal Rules of Civil Procedure, this court order process to issue against the defendants, United States of America and the Interstate Commerce Commission;

2. That in accordance with Section 2284 (1) of Title 28, United States Code, the Judge of this court immediately notify the Chief Judge of this circuit who shall designate

two other judges, at least one of whom shall be a circuit judge, to serve as members of the court to hear and determine this action;

3. That in accordance with Section 2284 (a) of Title 28, United States Code, this court restrain the United States of America and the Interstate Commerce Commission from enforcing the rules and regulations contained in the Interstate Commerce Commission's order of May 8, 1951 hereinbefore described in paragraph XIII of this complaint, pending final hearing and adjudication of the issues raised in this complaint.

[fols. 17-19] 4. That upon final hearing of this action, judgment be entered enjoining, setting aside, or annulling the Interstate Commerce Commission's aforesaid order of May 8, 1951, as amended by the order of July 20, 1951.

5. That the Court grant such further relief as it deems just and proper.

Respectfully submitted, Marc Ray Clements, Tuscaloosa, Alabama, Edgar S. Idol, Harry E. Boot, Francis W. McInerny, James W. Wrape, George S. Dixon, Herbert Baker, Joseph H. Blackshear, Noel F. George, William R. Heffernan, Attorneys for Plaintiffs.

[fol. 20] EXHIBIT A TO COMPLAINT

Interstate Commerce Commission

49 CFR, Part 207

Ex Parte No. MC-43

Lease and Interchange of Vehicles by Motor Carriers

Notice of Proposed Rule Making

ORDER

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D. C., on the 9th day of January, A. D. 1948.

Sections 202 (a), 204 (a) (1), (2), and (6), 215, 216 (b), (c), and (e), 220 (a) and (d), and 224 of the Interstate

Commerce Act being under consideration; and good cause appearing therefor:

It is ordered, That an investigation be, and it is hereby, instituted by the Commission, Division 5, on its own motion, into the lawfulness of the practices of motor common and contract carriers of property respecting the performance of transportation in interstate or foreign commerce, subject to the general provisions of part II of the Act, by such carriers with motor vehicles owned by others, including those driven by the owners of the vehicles or employees of the owners of the vehicles, and including the use by one such motor carrier of part of the carrying capacity of a vehicle owned by another, the interchange of vehicles between such motor carriers, and the lease of vehicles by such motor carriers, with and without drivers, to private motor carriers and shippers, with a view to determining (1) whether any or all of the present practices of the said carriers, with respect to the performance of transportation by the use of vehicles owned by others, the interchange of vehicles, [fol. 21] and the leasing of vehicles to private carriers and shippers, should be required to be discontinued because unlawful or contrary to the public interest; and if any or all of the present practices are to be continued (2) whether—

(a) the renting of vehicles by or to motor common and contract carriers, with or without drivers, should be limited to long-term leases;

(b) the use of leased vehicles by motor common and contract carriers should be limited to a fixed percentage of the number of vehicles to which the using motor carrier holds title; and

(c) the motor carriers' practices should be governed by the rules and regulations set forth in tentative form in the attached appendix or such other rules and regulations as may be found to be reasonable;

and to take such other action in the premises as the facts and circumstances shall appear to warrant.

It is further ordered, That all motor common and contract carriers of property subject to the general provisions

of equipment between authorized carriers at a point which both carriers are authorized to serve.

d. Regular employee.—A person not an agent but regularly and in exclusive full time employment.

e. Non-carrier.—A person other than an authorized carrier.

Rule 2. Augmenting Equipment. Authorized carriers may perform authorized transportation in vehicles to which they do not hold title only under the conditions specified in this rule, except that vehicles and equipment rented or leased from another authorized carrier may be utilized in interchange service only as provided in Rule 3 of these regulations.

a. Contract, lease, or other arrangement for the use of equipment under this rule—

(1) Shall be in writing and signed by the makers;

(2) Shall be made direct between the owner of the equipment or a person in his regular employ, on the one hand, and the authorized carrier or a regularly employed supervisory employee of the carrier, on the other hand;

(3) Shall provide for the exclusive use of the equipment during the full period of the lease and shall not permit the subletting or subleasing of the equipment in whole or in part, or permit use of the equipment for the transportation of property of the lawful owner of the equip- [fol. 23] ment, or property which is in his custody or control as agent of shippers; and

(4) Shall specify the time and date the contract, lease, or other arrangement begins and ends, which shall be the times of the giving of receipts for the equipment as required by Rule 2b.

b. Equipment may be used under this rule only during the time it is in possession of the authorized carrier. The authorized carrier or its regularly employed supervisory employee shall, at the time it takes possession, give to the owner or its agent, a receipt specifically identifying the equipment; and, at the time its possession ends, shall obtain from the owner or its agent, a receipt delivered to

the authorized carrier or its regularly employed supervisory employee.

c. Compensation for the use of the equipment shall be computed on a use (such as time or mileage) basis, and no contract, lease, or other arrangement for the use of equipment under this rule shall provide for payment for such use based on the revenue earned by the equipment.

d. It shall be the duty of the authorized carrier, before taking possession of equipment in accordance with Rule 2b, to require a responsible and competent regular employee to inspect the equipment proposed to be used under this rule to insure that it complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Parts and accessories necessary for safe operations" and "Inspection and Maintenance" and if it is proposed to transport explosives or other dangerous articles further to inspect and check such vehicle or equipment to insure that it complies with Part 7 of the Safety Regulations pertaining to "Safe Transportation of Explosives." If it is found that the equipment proposed to be rented does not comply with the safety regulation requirements, possession shall not be taken.

e. The authorized carrier acquiring the use of the equipment shall properly and correctly identify such equipment as operated by it during the period of the contract, lease, or other arrangement in accordance with the Commission's requirements and in the following manner:

(1) If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material, such as wood, plastic, or steel, and [fol. 24] bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use on rented equipment.

(2) Proper record of the affixing of the removable device shall be maintained at the authorized carrier's terminal and shall show the serial number of the device that is affixed to the rented equipment, the date affixed, the name and address of the lawful owner of the equipment, the State registration number of the equipment to which device is affixed, and the date the device was removed by the authorized carrier.

(3) The authorized carrier shall remove the device upon relinquishing possession in accordance with Rule 2b, and before the final settlement for the rental charges is made.

f. The authorized carrier shall prepare and preserve for two years a truck or load manifest covering each load or trip for which the equipment is used in its service, such manifest record to show—

(1) Name and address of the lawful owner of the equipment;

(2) State registration number of the equipment;

(3) Name and address of the driver operating the equipment;

(4) Description and weight of the commodities transported in the equipment;

(5) Point or place of origin and time and date of departure;

(6) Point and place of final destination and time and date of arrival; and

(7) Carrier's serial number or identification device affixed to the equipment.

g. Before any person other than a regular employee of the carrier is engaged and assigned to drive equipment operated under this rule, it shall be the duty of the authorized carrier to—

(1) Insure that the driver is familiar with Parts 2, 4, and 5 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Driving of motor vehicles," "Reporting of accidents," and "Hours of service of drivers"; and

(2) Require such drivers to furnish a certificate of physical examination in accordance with Part 1 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Qualifications of drivers," or in lieu thereof furnish a photo- [fol. 25] static copy of the original certificate of physical examination which shall be retained in the authorized carrier's files for a period of not less than two years after the termination of the driver's employment.

h. The person assigned to drive equipment operated under this rule shall be an employee of the carrier, and his wages shall be separate and distinct from the charges

made for the use of the equipment and shall not be made part of the terms or conditions of the contract, lease, or other arrangement covering the use of the equipment.

i. The terms and conditions of the agreement, contract, or lease for the use of the equipment, shall be in writing and shall set forth (1) the charges to be made for the use of the equipment, (2) the method of arriving at such charges, (3) a complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service, and (4) the time and date the agreement, contract, or lease begins and ends together with a written endorsement of each party to such agreement, contract, or lease that (a) it contains an accurate and complete statement of the terms thereof, (b) the equipment covered in the agreement has been inspected and checked and found to meet the requirements of Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.), and if it is proposed to transport explosives or other dangerous articles that it also meets the requirements of Part 7 of the Safety Regulations pertaining to "Safe transportation of explosives," and (c) the authorized carrier acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public, shipper, and Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment for the duration of the agreement, contract, or lease.

j. It shall be the duty of the authorized carrier acquiring the use of the equipment to have the agreement, contract, or lease, as set forth in these regulations, prepared in writing and duly executed by both parties before the arrangement is placed in effect, to retain in its files for not less than two years after the termination of the arrangement the original copy of the written agreement, contract, or lease, and to furnish the driver of the equip-[fol. 26] ment a true and certified copy of such agreement, lease, or contract to be carried in his possession while driving the rented equipment during the full period of the arrangement.

k. The provisions of paragraphs, a, c, d, and h of this

rule shall not apply to operation of equipment by any carrier in accordance with a plan heretofore submitted by such carrier in a formal proceeding and specifically approved by the Commission.

Rule 3. Interchange of equipment. Authorized carriers may not interchange equipment, excepting that common carriers of property may by agreement, contract, or lease interchange semi-trailer or full trailer equipment with other common carriers of property for the purpose of transporting through traffic under the following conditions:

a. Proposed through service is from a point on one carrier's lines to a point on the other carrier's lines, both of which points are not authorized in a certificate held by either carrier.

b. Contract, lease, or other arrangement for the use of the equipment is made direct by the carrier who is the lawful owner of the equipment and another carrier proposing to acquire the use of the equipment, or by persons who are in their regular employ, provided that the arrangement will not permit the subletting or subleasing of the equipment in whole or in part.

c. The certificates held by the carriers participating in the interchange arrangement authorized the transportation of the commodities proposed to be transported in the through movement and further authorize service from and to the points where the physical interchange occurs.

d. Each carrier assigns its own driver to operate the tractor or straight truck that it proposed to be operated in combination with the rented semi-trailer or full trailer from and to the point of interchange and over the route or routes authorized in the participating carrier's respective certificates.

e. Traffic moves on through bills of lading issued by the carrier originating the traffic which shall show the name of the carrier with which it is proposed to interchange equipment. The rates charged and revenues collected shall be accounted for in precisely the same manner as if there [fol. 27] had been no interchange of equipment and in the manner prescribed by the Commission. The charge for the rental of the equipment shall be separate and distinct

from the divisions of the joint rates or the proportions accruing to the carriers by the application of local or proportional rates.

f. It shall be the duty of the carrier that acquires the use of the equipment in interchange service to require a responsible and competent employee to inspect the equipment before it is accepted and operated over its lines to insure that such equipment complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Parts and accessories necessary for safe operation" and "Inspection and maintenance." If it is proposed to transport explosives and other dangerous articles, a further inspection or check shall be made to insure that the equipment complies with the provisions of Part 7 of the Motor Carrier Safety Regulations (Rev.) pertaining to the "Safe transportation of explosives." If the equipment is found not to meet the safety regulation requirements, it shall be the duty of both carriers not to permit its operation in their respective service until the defects have been corrected.

g. The terms and conditions of the agreement, contract, or lease for the use of the equipment shall set forth—

(1) The charges to be made for the use of the equipment which shall have no relation to the lawfully filed rates and charges of the carriers participating in the arrangement;

(2) The method of arriving at such charges;

(3) A complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service;

(4) Time and date agreement, contract, or lease begins and ends;

(5) Specific points or places where physical interchange of equipment will occur; and

(6) A description of the type of equipment proposed to be interchanged.

h. The agreement, contract, or lease shall include a written endorsement of each carrier participating in the agreement that (1) it contains an accurate and complete statement of the terms thereof, (2) the equipment covered

[fol. 28] in the agreement has been inspected and checked and found to meet the requirements of Parts 3, 6, and 7 of the Motor Carrier Safety Regulations (Rev.) and (3) the carrier acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public, shipper, and Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment while operating over its lines for the duration of the agreement, contract, or lease. The agreement, contract, or lease as set forth in these regulations shall be prepared in writing and duly executed by the interested parties, copies of which shall be retained in the files of each of the participating carriers at their principal place of business for not less than two years after the termination of the arrangement.

Rule 4. Rental of motor vehicles and equipment to private carriers or shippers. a. Authorized carriers are prohibited from renting equipment to non-carriers with drivers, and shall not directly or indirectly assist such non-carriers to select or obtain drivers for equipment rented to them.

b. Authorized carriers may not furnish equipment without drivers to non-carriers except under the following conditions:

(1) The agreement, contract, or lease is made direct between the authorized carrier who is the lawful owner of the equipment and the private carrier or shipper or between persons who are in their regular employ.

(2) Period of the agreement, contract, or lease is for not less than 180 days.

(3) Arrangement, contract, or lease for the use of equipment shall provide for the exclusive use of the equipment during the full period of the rental agreement and shall not permit the subletting or subleasing of such equipment in whole or in part.

(4) Before the effective date of the agreement, contract or lease, the authorized carrier shall cause to be removed from the equipment all marks of identification that indicate that such equipment is utilized in its operations. The

authorized carrier's markings or identifications removed from the equipment will not be restored until the termination of the agreement.

[fol. 29] (5) It shall be the duty of the private carrier or shipper to require a responsible and competent person in its regular employ to inspect the equipment proposed to be rented to insure that the equipment complies with Parts 3 and 6 of the Motor Carrier Safety Regulations (Rev.) pertaining to "Parts and accessories necessary for safe operation" and "Inspection and Maintenance." In the event that it is proposed to transport explosives and other dangerous articles, a further inspection or check shall be made to insure that the equipment complies with the provisions of Part 7 of the Safety Regulations pertaining to "Safe transportation of explosives." If the equipment is found not to meet these requirements, it shall be the duty of the private carrier or shipper not to operate such equipment.

(6) The terms and conditions of the agreement, contract, or lease for the use of the equipment shall be in writing and shall set forth (a) the charges to be made for the use of the equipment, (b) the method of arriving at such charges, (c) a complete statement of all the terms, agreements, or practices affecting the charges or the value of the rental service, and (d) the time and dates the agreement, contract, or lease begins and ends.

(7) The agreement, contract, or lease shall include a written endorsement of each party thereto that (a) an accurate and complete statement of the terms thereof, (b) the equipment covered in the agreement has been inspected and checked and found to meet the requirements of Parts 3, 6, and 7 of the Motor Carrier Safety Regulations (Rev.), and (c) the private carrier or shipper acquiring the use of the equipment will exercise full control, direction, and domination of the service and accepts full responsibility to the general public and the Interstate Commerce Commission for the transportation furnished to the same extent as if it were the lawful owner of the equipment for the duration of the agreement, contract, or lease.

(8) It shall be the duty of both the authorized carrier

and private carrier or shipper to prepare the agreement, contract, or lease as set forth in these regulations in writing, duly execute same before the arrangement is made effective, and to retain in each of its files for not less than two years after the termination of the arrangement [fol. 30] true copies of the agreement, contract, or lease, the original of which shall be mailed by the authorized carrier, five days before its effective date, to the district office, Bureau of Motor Carriers, Interstate Commerce Commission, in which it is domiciled.

[fols. 31-114] Exhibit B to complaint omitted. Printed side page 4967.

[fol. 115] EXHIBIT C TO COMPLAINT

Interstate Commerce Commission

Ex Parte No. MC-43

Lease and Interchange of Vehicles by Motor Carriers
Decided May 8, 1951

Upon oral argument, rules and regulations to be observed by motor common and contract carriers of property subject to part II of the Interstate Commerce Act, governing the practices of such carriers in the leasing and interchange of motor-vehicle equipment, prescribed. Findings in prior report, 51 M. C. C. 461, modified accordingly.

REPORT OF THE COMMISSION ON ORAL ARGUMENT

By the Commission:

In the prior report, 51 M. C. C. 461, division 5 prescribed rules and regulations governing the leasing and interchange of vehicles by carriers transporting property by motor vehicle in interstate or foreign commerce, subject to our jurisdiction. These rules are reproduced in appendix A hereto. Pursuant to petitions on behalf of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, hereinafter called the Teamsters Union, the National Industrial Traffic League,

the Class-I railroads, Household Goods Carriers Conference, and other conferences and associations of motor carriers and individual motor carriers, seeking reconsideration and modification of the rules prescribed, we reopened the proceeding for oral argument and the parties have been heard.

[fol. 116] THE ISSUES

The investigation was instituted by division 5 on January 8, 1948, by issuing a notice of proposed rule-making, stating that an investigation would be made under specified sections[1] of the Interstate Commerce Act, into the lawfulness of the practices of motor common and contract carriers of property subject to our jurisdiction, generally referred to herein as authorized carriers, respecting the performance by them of transportation with vehicles owned by others, including the use by one such carrier of part of the capacity of a vehicle owned by another, the interchange of vehicles between such carriers, and the lease of vehicles by such carriers, with and without drivers, to private motor carriers and shippers.

Notice of the proposed rule-making was given to the general public by depositing a copy of the notice of January 8, 1948, in the office of the Secretary of the Commission for public inspection, by filing a copy with the Director, Division of the Federal Register, and by serving a copy of the notice together with tentative rules attached thereto, on each authorized carrier in the United States then subject to our jurisdiction.

The investigation, as stated in the order of division 5, instituting it, is to determine (1) whether any or all of the present practices of the authorized carriers with respect to the performance of transportation by the use of vehicles owned by others, the interchange of vehicles, and the leasing of vehicles to private carriers and shippers, should be required to be discontinued because unlawful or contrary to the public interest; and, if any or all of the present practices are to be continued; (2) whether (a) the

[1] Sections 202 (a), 204 (a) (1), (2), and (6), 215, 216 (b), (c), and (e), 220 (a) and (d), and 224.

renting of vehicles by or to authorized carriers, with or without drivers, should be limited to long-term leases; (b) the use of leased vehicles by such carriers should be limited to a fixed percentage of the number of vehicles to which the using authorized carrier holds title; and (c) the authorized carriers' practices should be regulated by the tentative rules and regulations, or such other rules and regulations as might be found reasonable.

[fol. 117] The American Trucking Associations, Inc., hereinafter called A. T. A., its Household Goods, and Contract Carriers Conferences, others of its constituent conferences, the regulatory bodies of Florida, Washington, Wisconsin, Massachusetts, Nebraska, Rhode Island, Ohio, Maine, and Iowa, numerous associations of motor carriers, both common and contract, the railroads, the Railway Express Agency, Inc., numerous individual carriers and shippers, owners and operators of vehicles under lease to carriers, the Teamsters Union, the Bureau of Motor Carriers, hereinafter called the Bureau, and others, participated in the extensive hearings that were held. A voluminous record was compiled, accompanied by numerous exhibits, in which evidence was introduced by proponents of the tentative rules or other similar regulations, tending to indicate evil effects upon the for-hire trucking industry attributable to leasing, and by others, holding opposite views, of the economic benefits and other advantages to the industry resulting from the leasing practices, particularly the trip-leasing of owner-operators and carriers of exempt commodities.

As previously stated, tentative rules were served with the notice of rule-making instituting the proceeding. These rules, compiled by the Bureau, embodied various suggestions of numerous parties and covered all aspects of leasing in great detail. Some of the rules tended to conflict with others. In the proposed report, the examiner recommended certain rules, embracing some of the provisions of the tentative rules, and these proposed rules, or most of them, with various suggested modifications, are supported by the Bureau, the Teamsters Union, A. T. A.'s Contract Carriers Conference, certain of the State regulatory bodies, and a number of the authorized carriers.

These proposed rules are set out in appendix B hereto. A. T. A., on behalf of its constituent carrier conferences, except the Contract Carriers Conference, Household Goods Carriers Conference, Heavy Haulers Division of the Local Cartage National Conference, and the Oil Field Haulers Conference, proposed rules which are reproduced in appendix C. A. T. A. and the parties which supported its proposed rules at the hearings, although still advocating certain of the provisions therein, now indicate that [fol. 118] they are in substantial accord with the rules prescribed by division 5.

This proceeding has arisen because of a practice which antedates the Motor Carrier Act of 1935, now part II of the act, and undoubtedly is more prevalent in the motor-carrier industry than in any other field of transportation, i. e., the use of non-owned vehicles in their operations by those holding authority as carriers. To a great extent the ownership in such cases is vested in individuals who either drive the vehicles or hire others to drive them. These lessors are generally known, and will be referred to herein, as owner-operators. Many of them are engaged in transporting commodities specified in section 203 (b) (6) of the act, and are sometimes described as exempt commodity haulers.

The authorized carriers utilize the vehicles of others under a great variety of arrangements, including informal verbal agreements, made over the telephone, or on the spot, in many instances for a single haul or a round trip, as well as under written agreements applying for definite periods, and meeting the essential requirements of valid bilateral contracts. The single-haul arrangement is generally described as a trip lease. All these arrangements are embraced in the term "leasing," as used herein, including arrangements between authorized carriers. There is considerable leasing between authorized carriers, and by the carriers from concerns engaged entirely in renting and maintaining motor-vehicle equipment. There is little evidence respecting the activities of such lessors.

The term "interchange," as used herein, is generally understood as covering the physical exchange of equipment, usually trailers, between authorized common car-

riers, at some common point, and generally in the furtherance of a through movement of freight over the lines of such carriers. Completely loaded trailers may be exchanged, or a loaded trailer may be tendered by one of the carriers in exchange for an empty vehicle to be used by the first carrier, while the second is completing the through movement. In some instances straight trucks are interchanged or exchanged. Although such movements usually are confined to two lines, it is indicated that in some instances three or more carriers may participate in a through movement, and interchange of equip- [fol. 119] ment. There is not a great deal of evidence respecting interchange, although many of the parties insist that it should be subject to regulation, and the evidence indicates that abuses, particularly unlawful extensions of operations, are possible under the guise of interchange. The evidence deals principally with the impact upon the motor-carrier industry of the roving owner-operators, and to the use made of them. These are sometimes described as "gypsies," or itinerant truckers, and many of them serve any carrier with whom favorable trip-lease arrangements can be made, particularly for the transportation of truckloads of heavy-loading high-revenue freight. The itinerant trucker is not interested in less-than-truckload traffic because of the time consumed in handling it, and the cost of loading and unloading it.

In addition to the issues embraced in the notice of rulemaking instituting this investigation, hereinbefore mentioned, a major issue is the question of our authority under the act to regulate the practices under investigation. Another important issue is whether the hiring of vehicles, with or without drivers, should be under long-term leases. This issue has created the most cleavage among the respondents, and has aroused the most controversy, as a requirement of this character in effect would preclude the use of equipment under trip leases. Other important issues are whether compensation for leased equipment, based on a percentage of the revenue earned with the equipment, should be prohibited, whether possession of the leased vehicle should be vested exclusively in the lessee for the duration of the lease, and sub-leasing prohibited,

whether the driver of a leased vehicle should be an employee of the lessee, whether interchange between common carriers should be restricted as to type of equipment or number of carriers, and whether any carrier or group of carriers should be exempted from any rules that may be prescribed.

THE NEED FOR REGULATION

The leasing practices of the authorized carriers have presented difficult problems from the inception of regulation in 1935, particularly in determining the parties entitled to certificates and permits under the "grand-[fol. 120] father" clauses of the act. Early in its administration, in 1937, in the absence of any formal decision, the Bureau issued Administrative Ruling No. 4, which provided, in substance, that an authorized carrier could use a vehicle which it did not own in its operations only if it assumed exclusive possession and control thereof, and if the vehicle was driven by one of its employees. In a few early cases operating authorities were issued applicants whose practices apparently met these requirements, although the administrative ruling was never officially adopted. A leading early decision in which more liberal tests were applied, namely, whether the vehicles of the owner-operators, while used in the carrier's service, were operated under its direction and control, and under its responsibility to the general public as well as to the shipper, is Dixie Ohio Exp. Co. Common Carrier Application, 17 M. C. C. 735, subsequently followed in many reports. Thereafter, the courts and this Commission have considered many aspects of motor-carrier operations conducted in vehicles not owned by the carriers and conditions have been determined under which certificates or permits under the "grandfather" clauses of the act could be granted based on such operations. Important decisions are Thomson v. United States, 321 U. S. 19, and Allied Van Lines, Inc., Common Carrier Application, 46 M. C. C. 159. The latter report reviews the holdings in other cases. An important consideration in determining the rights to authority under the "grandfather" clauses, in the case of operations conducted in vehicles owned by others has been

the court holding that where a single transportation service was held out, no rights to multiple operations were created. United States v. Rosenblum Truck Line, Inc., 315 U. S. 50.

The concept of the extent of control over non-owned vehicles necessary on the part of one seeking to conduct operations as a motor carrier under the "grandfather" clauses of the act has undergone considerable evolution since Administrative Ruling No. 4 was issued. The requirements of that rule, applied as stated, in some of our earlier decisions, no longer prevail. In view of a position taken by many parties to this proceeding that the status of owner-operators and others as independent contractors for authorized carriers has attained such stature by court [fol. 121] construction that no leasing regulations having the effect of restricting it in any way could be prescribed, we think it important to stress that the prevailing concept of the control over non-owned vehicles necessary on the part of the authorized carriers, was developed in proceedings under the "grandfather" clauses, and in deference to the apparent Congressional intent therein not to grant multiple "grandfather" rights based on a single transportation service. In the Thomson case, supra, the railroad was found entitled to a certificate as a common carrier by motor vehicle covering its substituted motor service under the "grandfather" clause, although the vehicles operated in its service were provided by 23 independent truckers, which hauled for others than the railroad, and had filed applications under the "grandfather" clause in respect of such other transportation. They were designated in the contracts with the railroad as "independent contractors." The reasoning of the court, in substance, was that this description was only "contract nomenclature"; that the contractors were mere aids in carrying out a part of the railroad's coordinated motor-rail service, and that only the railroad was entitled to authority under the "grandfather" clause in respect of such service. The Court said:

> Any other conclusion would authorize the wholesale granting of twenty-three "grandfather" permits to the various motor vehicle operators on the basis

> of this single transportation service offered by the railroad—a result which ascribes to Congress an intent incompatible with its purpose of regulation.

Preceding this conclusion, however, the Court noted that, as to the motor-vehicle operations supplementing its rail service, the railroad was not a mere "freight broker" or forwarder; that the provisions and actual operations of the contracts with the truckers demonstrated the railroad's rigid control over the movement of the freight, and its retention of full responsibility to the shipper.

Greyvan Lines, Inc., one of the larger carriers of household goods, which operates exclusively through owner-operators, and others opposed to regulations of the type proposed by the examiner, argue that the status of owner-operators as independent contractors is so well settled, that it cannot be altered by regulations which we might prescribe, without violating the constitutional rights of [fol. 122] the parties, citing United States v. Silk and Harrison v. Greyvan Lines, 331 U. S. 704. That decision presented a question as to the status of the owner-operators for Greyvan, and certain owner-drivers which performed deliveries within Topeka, Kans., for a retail coal dealer at a uniform price per ton. The owner-operators were held to be independent contractors rather than employees, and hence it was found that Greyvan was not liable for taxes under the Social Security Act. The Court, however, indicated that its determination was made only with respect to the narrow issue before it, and was not to be taken as conclusive upon all situations in which the services of owner-operators might be utilized by authorized carriers. The Court recognized that:

> There are cases * * * where owner-drivers have been held employees in accident suits in tort or under workmen's compensation laws. But we agree with the decisions in Silk and Greyvan that where the arrangements leave the driver-owners so much responsibility for investment and management as here, they must be held to be independent contractors.

The dissenting-in-part opinion of Justice Rutledge pointed out the possibility that both Silk and Greyvan might be held liable in tort under common law tests, and that this would be clearly indicated in the case of Greyvan, in view of the fact the trucks bore its name, in addition to other factors, including a large degree of control exercised over the trucking operations.

Whatever may be the situation with respect to owner-operators under contracts to authorized carriers for definite periods, as were the owner-operators in the decision just referred to, there seems to be little doubt that where an owner-operator performs transportation for an authorized carrier under a trip lease, under which the obligation and responsibility of the lessee terminates concurrently with the completion of the trip by the lessor owner-operator, the latter is an independent contractor. Costello v. Smith, 179 Fed. (2d) 715. And, as indicated in the decision just cited, although the lessee carrier may be held responsible to the public for the torts of the owner-operator until the expiration of the lease, thereafter, until the latter is again under lease to another authorized carrier, he is not under the responsibility of any carrier and the public [fol. 123] may not be protected by insurance. An investigation conducted by the Bureau of Motor Carriers indicates that such situations are not unusual.

It now seems to be accepted that when an authorized carrier furnishes service in vehicles owned and operated by others, he must control the service to the same extent as if he owned the vehicles, but need control the vehicles only to the extent necessary to be responsible to the shipper, the public, and this Commission for the transportation. When these tests are met, it has been held in numerous proceedings under the "grandfather" clauses that the vehicle operated in the service of the one holding out to the public could be provided by independent contractors, as in the Thomson case, supra. Where operating authority has been "farmed out" to non-carriers, however, as in the "provider plan" considered in Performance of Motor Com. Car. Service by Riss & Co., Inc., 48 M. C. C. 327, and the elements of direct control over the movement and handling of freight, and of full responsibility to the shipper, and sole holding-

out of service to the public, have been lacking, it has been found that the elements of the common-carrier definition in section 203 (a) (14) of the act are not present. As hereinafter seen, the evidence herein indicates that under certain of the leasing practices in effect today these important elements have been greatly weakened.

The importance of the minimum requirements for carriers subject to the act, which operate through the use of vehicles which they do not own, in respect of a major aspect of our regulatory power, was pointed out by division 5 on page 360 of its report in the Riss case, supra, in the following language:

> In any case of a person claiming to be a motor carrier through the use of the vehicles of others, it is of the utmost importance to regulation that it have and exercise direction and control of the operations and of the persons engaged therein. For otherwise an unworkable situation is created, that is, one, for example, in which neither the Commission nor the person claiming to be the carrier would have any immediate and direct control over safety, hours of service of employees, and other matters pertaining to safe, adequate, and efficient service, and the safe operation of vehicles on the highways, all of which [fol. 124] were intended by the act. In other words, as to these important features of motor-carrier operation, our regulation thereof, as required by the act, would be negatived to an inoperative degree, as the actual operator would not be subject to our regulations or to the direction and control of the person claiming to be the carrier and subject to our jurisdiction.
>
> The importance which Congress attached to the safety provisions of part II of the act is plainly shown by the fact that while "section 203 (b) listed many types of motor carriers which were exempted in general from the act * * * that section significantly applied to all of them the provisions of section 204 as to qualifications, maximum hours of service, safety of operation and equipment." Levinson v. Spector Motor Co., 230 U. S. 649, 659.

For a number of years, particularly beginning in 1940, the Bureau has given consideration to the leasing practices of the authorized carriers. Meetings were held with selected typical carriers at various points in 1940. In 1941 a study was begun of the practices, including the methods and amounts of compensation paid lessors, and a statistical report covering these subjects was released in 1943. During the war, directives of the Office of Defense Transportation, and our orders, designed to require the maximum use of motor-vehicle capacity, and the conservation of fuel and tires, while not authorizing transportation by persons lacking appropriate authority, sanctioned many practices that were permissible only because of the emergency. As a result, leasing among authorized carriers became more prevalent and widespread. After the war, because of the desire of many veterans to engage in business for themselves, the ease with which they could obtain financial aid in buying equipment and the difficulty of entering a regulated industry, leasing practices, particularly the employment of owner-operators, have greatly increased.

After the emergency directives and orders were canceled, the Bureau continued to receive complaints regarding practices of carriers under the guise of leasing, which, in some instances, amounted to unauthorized leases of operating rights. It was ascertained that motor common carriers in the eastern part of the country were augmenting equipment in times of heavy traffic with vehicles of other [fol. 125] carriers, exempt haulers, or private carriers, without a lease of any kind. When vehicles of other carriers were used, the other carrier sometimes transported freight on its own billing, and exempt and private carriers frequently transported freight for a number of carriers. Similar conditions were found in the Chicago, Ill., area, except that more carriers there depended on the services of itinerant owner-operators.

In instances where an authorized regular-route carrier permits another to operate over its certificated route under an ostensible vehicle lease, it is difficult at present to determine whether or not the lease is bona fide, or whether an unauthorized and illegal operation is being conducted.

In 1947, the Bureau drafted tentative rules governing the practices under consideration, which were offered to representatives of the carriers for criticisms and suggestions. Although there was general agreement that some action should be taken to correct the abuses, the carriers were unable to agree as to the nature of such action.

The importance of leasing to motor carriers is indicated by a survey made by the Bureau in 1947 through questionnaires to the more than 19,000 authorized carriers then subject to our jurisdiction, a summary of which is shown in the following table:

Type of carrier and total number	Leasing important Percent	Leasing unimportant Percent	Did not lease Percent
General commodity carriers (5,519)	27.3	9.5	63.2
Tank truck operators (457)	32.6	14	53.4
Household goods carriers (2,611)	24.5	6.8	68.7
Heavy haulers (710)	21.3	13.2	65.5
Carriers of other special commodities (6,186)	8.3	6.9	84.8
Not classified (2,038)	50.2	3.7	46.1
Local carriers (1,480)	7.6	8.9	83.5

Of the reporting carriers, 113 local and 3,984 intercity carriers regarded leasing as important, 132 local and 1,363 intercity carriers practiced it, but regarded it as unimportant, and 1,235 local and 12,174 carriers did not practice it in 1947. Leasing was practiced by 5,592 carriers of all types, including 245 local carriers; and 4,047 of the carriers which practiced leasing regarded it as important. This [fol. 126] number was over 21 percent of the total number of property carriers. As will be noted from the foregoing table, when the responses were tabulated according to type of carrier, they reflected no important variances from these data except in the case of local carriers, carriers of special commodities other than those shown in the table, and unclassified carriers. The percent of those engaging in leasing to the number of carriers, ranged from 25 in the East and Middlewest, to 35 in the South and Southwest, and 36 in central territory.

The carriers which regarded leasing as important in 1947, utilized their leased equipment under 38,785 long-term leases, 104,539 round-trip leases, and 394,896 one-

way trip leases. Of the 1,432 carriers using one-way trip leases, 724 carriers leased vehicles on no other basis. The total number of carriers using owner-operated vehicles to any degree was 830; and of this number, 298 carriers used owner-operators exclusively. The total number of one-way trip leases between carriers and owner-operators, 206,740, was over 52 percent of all such leases.

The indication in the foregoing table that the leasing of equipment is not important to household goods carriers is contradicted by the Household Goods Carriers' Bureau, representing some 2,200 such carriers throughout the country, and the Household Goods Carriers' Conference of A. T. A. These organizations represent approximately 80 percent of the more than 4,000 household goods carriers of the country. As illustrating the importance of leasing to these carriers, in 1947, 46 class-I household goods carriers owned only 30 percent of the vehicles used, leased 50 percent of their vehicles, and purchased 20 percent of their transportation. Of their total revenue mileage, 42 percent was compiled in leased vehicles, and 58 percent in owned vehicles.

The Bureau also conducted an informal investigation through members of the field staff of specific instances of these practices which appeared to be unlawful or undesirable because contrary to the public interest. Some 77 examples of such practices were compiled and introduced in evidence. A summary of the conclusions of the field staff as a result of this investigation is shown in appendix D, but we believe it important to refer to a few of the specific examples of practices discovered. They illustrate, par- [fol. 127] ticularly in the case of the regular-route carrier, the difficulty of differentiating between bona fide equipment leases, or bona fide interchange, and unauthorized extensions of operating rights. In one example, a carrier possessing operating authority between Chicago, Ill., and Louisville, Ky., but not beyond the latter point, obtained traffic destined to Chicago from points beyond Louisville and arranged with a carrier having authority to perform the service for what purported to be interchange at Louisville. The carrier serving Chicago, however, performed all the transportation in its vehicles, using shipping docu-

ments of the local carrier, and retained all the revenue. It appeared that the local carrier permitted this in order to keep the goodwill of a shipper, and to prevent the Chicago carrier from obtaining operating authority beyond Louisville.

Another carrier solicited and obtained traffic to a point outside the scope of its authority. It applied for the authority, which was denied. It then made arrangements with another carrier for connecting service, through a theoretical lease of its vehicles beyond the point where its authority ended. At the time of the Bureau's investigation of this movement 60 loads of freight had been transported but the ostensible lessee had no knowledge of any movement. The majority of the shipments were transported over the most direct route and not through a point common to both carriers.

In another instance, the Bureau discovered that certain local carriers at St. Louis, Mo., having authority to serve the surrounding towns, furnished signed, but otherwise blank lease forms to long-distance carriers having authority to serve St. Louis but not the surrounding towns. After a long-distance carrier had made delivery to one of these towns, it would send a completed lease to a local carrier which previously had signed it, and the latter would issue a freight bill, sending a copy to the ostensible lessor. The local carrier was paid from $3 to $5 for each trip lease.

Many instances were found where contract carriers, having shipments destined to points outside the scope of their operating authorities, arranged for purported leases of their equipment to common carriers. Other than signing shipping papers, furnishing identification placards for the [fol. 128] contract-carrier vehicle, and collecting fees for the use of their rights, the common carriers had no connection with the movement.

In one example, an owner-operator leased five pieces of equipment to a common carrier over irregular routes domiciled in Pennsylvania but owning no terminal. The owner-operator performed the solicitation and the transportation. At the same time the same equipment was leased by the owner to a private carrier. The owner-operator

also claimed to have an oral lease arrangement with an irregular-route common carrier of general commodities domiciled in West Virginia. When a shipment was tendered to him for transportation, the owner-operator determined under which authority the transportation would be performed, and the shipment was billed on the forms of that carrier, although none of the lessees had any direction or control over the operation. Only selected and profitable traffic was transported.

The Bureau discovered that certain tank-truck operators used equipment furnished by truck rental companies. The carrier would notify the rental company of shipments to be handled and the equipment was dispatched by the rental company. One piece of equipment and the same driver might transport three or more shipments on the same day for as many carriers.

An owner-operator whose truck was under permanent lease to a motor common carrier, used the vehicle also to perform intrastate transportation for others than the lessee. He occasionally solicited and transported interstate traffic to points the lessee was not authorized to serve, under the billing of the lessee, for which he received 85 percent of the gross revenue. In transporting c. o. d. shipments he failed to collect the charge therefor, or to show the shipment on the freight bill. He had no knowledge of our safety regulations and did not comply with them. He was under the impression that he was leasing the operating rights of a carrier rather than leasing his equipment to the carrier.

In another example three common carriers having authority to provide the service and adequate equipment, solicited the traffic of a shipper which contemplated moving its plant from New Jersey to Acworth, Ga., which is intermediate to Atlanta, Ga., and Chattanooga, Tenn. Another [fol. 129] carrier which did not have adequate equipment and lacked authority to serve Acworth, obtained the traffic and provided the service by leasing the equipment of exempt commodity carriers in New York to perform the haul from New Jersey to Atlanta. On arrival of the vehicles in Atlanta, this carrier arranged to sub-lease them to a regular-route carrier from Atlanta to Acworth for

$10 per load. The local carrier did not see any of these vehicles at any time.

Several instances were discovered of household goods movements, where a carrier lacking authority to perform final delivery, booked and in some instances performed the initial transportation of shipments outside the scope of its authority, under purported leases to other carriers. In one instance leases or purported leases were made with a total of seven carriers prior to the ultimate delivery of the shipment. When the shippers endeavored to collect a damage claim from the initial carrier, it denied liability. In another instance, a household goods carrier, which booked a shipment from Milwaukee, Wis., destined to Phoenix, Ariz., contended that a second carrier was liable to the shipper. The second carrier's authority did not embrace the origin point but it collected the entire charge for the transportation. Ultimate delivery at Phoenix was accomplished by a third carrier which received the shipment at Denver, Colo., and charged its local rate therefrom to Phoenix.

The Bureau found that some household goods carriers having extensive operating rights were in effect granting the use of such rights to numerous ostensible lessors of equipment, making the latter virtually independent operators upon payment of a percentage of the revenue from the shipments transported for the master carriers, for the use of the latter's rights. No specific examples of such practices among household goods carriers were described by the Bureau, and the evidence of the principal carriers having nation-wide operating authorities, hereinafter considered, is to the effect that such practices do not prevail to any serious extent.

The Bureau discovered several instances where carriers lacking authority to serve specific destinations would arrange with connecting carriers to permit transportation to such destinations over the connecting carriers' routes, [fol. 130] without transfer of lading, under purported trip leases of equipment, although the connecting carriers had no representatives at the points where the routes connected. Under such arrangements the lessees did not check to ascertain whether the equipment was maintained in compliance with our safety regulations, and whether the driver

was in compliance with our hours of service. The Bureau found that control over the drivers by carriers utilizing the services of itinerant owner-operators or haulers of exempt commodities was very lax. In one instance a driver of such vehicle had an accident, causing personal injury. He failed to give full information to the lessee, and the latter was not advised respecting the occurrence until five months thereafter.

The experiences of many carriers, as set forth in the record herein, also contain many examples of unlawful or undesirable practices attendant upon present leasing arrangements. A regular-route carrier of Milwaukee, which operates between that point and Chicago, discontinued the employment of owner-operators under trip leases because they failed to return its identifying placards. It also was unable to determine whether they complied with the hours-of-service regulations, and, as many did not carry certificates of physical examination, it could not always be certain as to their fitness to drive. Where an operator was used for only one trip it was not practicable to have the carrier's own physician conduct the examination. In one instance this carrier hired an owner-operator to transport a shipment from Chicago to Milwaukee, upon the operator's assurance that he had had the prescribed hours of rest. While en route he fell asleep while driving and the equipment was turned over. Upon a further check, the carrier ascertained that the owner-operator had previously driven 14 hours continuously for another carrier. His daily log had been inspected but had been falsified with respect to his previous hours of service.

An official of another regular-route carrier domiciled in Indianapolis, Ind., and serving that point, Chicago, Cincinnati, Ohio, and other points in central territory, stated that it spends at least a week checking the references and operating experience of an applicant for a driver's position, [fol. 131] and has such applicant examined by its own physician, but devotes only a few minutes to the compiling of similar information respecting owner-operators. In its experience the check made of owner-operator equipment, being necessarily brief where the operator is engaged for a single trip, is inadequate. This carrier hires

owner-operators under trip lease only for the transportation of freight at reduced rates which have been established by carriers operating almost exclusively with owner-operator equipment.

The owner of a tractor rented to an equipment-leasing company, and hauling a trailer bearing the name of a shipper, both vehicles being under ostensible lease or sublease to the shipper, solicited a return shipment from the carrier just referred to, after unloading at the carrier's dock, although the owner-driver claimed to be in the employ of the shipper, and requested that payment for his service be made to the shipper.

The manager of two associations of common carriers operating in the Chicago area, and between Chicago and Milwaukee, testified respecting unauthorized operations and other violations of the act occurring in that territory. In one example an owner-operator for a carrier having extensive rights over the eastern part of the United States transported a load of steel from Pittsburgh, Pa., to Chicago, the terminus of the carrier's authority, destined to Milwaukee. The driver's instructions were to interchange the shipment at Chicago but instead he transported it to Milwaukee and on his return to Chicago endeavored to enter into a trip lease with a carrier having operating rights between the two cities, covering the unauthorized transportation.

According to the witness, many carriers in the Chicago area utilize principally owner-operators because several hundred are available at the point. These carriers are interested only in truckload traffic, and have been responsible for numerous reduced rates, tending to cause a deterioration in the rate structure in central territory. A similar claim is advanced by carriers domiciled at St. Louis. Traffic inbound to the latter point preponderates, and much of it is transported by owner-operators, whereas outbound traffic is relatively light, creating a situation where the [fol. 132] owner-operators will accept a return load for enough revenue to pay their out-of-pocket expenses.

The Oil-Field Haulers Association, representing about 300 carriers engaged in transporting oil-field equipment and heavy machinery, conducted an investigation of the

leasing practices of this type of carrier which corroborated evidence developed by the Bureau. In one instance discovered by the Association an owner-operator of a leased truck, upon reaching destination, offered an association carrier his equipment for a return load, provided the carrier would pay him in cash and not advise the lessee of the transaction.

The experience of two of the largest contract carriers operating in midwestern territory in the employment of owner-operators for single trips, has demonstrated that careful examination of the equipment and of the operator is impracticable because of the administrative detail involved. These carriers spend considerable time in the examination of applicants for driver positions or owner-operators employed on long-term leases. In some instances where they have required a physical examination of owner-operator applicants, these have been found physically unfit, and in other instances the owner-operators were not interested in employment when they were advised that their equipment must be inspected and that they must take physical examinations. For competitive reasons these carriers utilize owner-operators on trip leases to transport about 10 percent of their traffic. They have lost the services of some of their permanent owner-operators, apparently because operations under trip lease were more profitable.

Carriers which specialize in stringing main trunk pipelines testified to unfair competi-on growing out of the practices of certain carriers in leasing vehicles with drivers to the contractors who purportedly operate as private carriers in order to beat down the charges for the service. In one instance, in which certain pipeline stringers bid on a job, the pipeline company leased the equipment of another carrier which lacked authority, and performed the service itself at lower charges than those quoted by the carriers having the authority.

The testimony of both the employing carriers and owner-operators indicates that in checking equipment for viola- [fol. 133] tions of our regulations it is difficult to ascertain whether the equipment is owned by a carrier or operated under lease because of the prevailing practice in some territories of assigning title to owner-operator equipment to

the lessee carrier, particularly when owner-operators are engaged under long-term leases. The assignment of title in such cases is made with the understanding that upon the termination of the lease the title is to be re-assigned to the owner-operator.

Owner-operator employed under trip leases after the completion of a one-way haul are "on their own," as an executive of a large carrier in central territory expressed it, and the lessee in most instances makes no effort to obtain a return load for the operator. Most of the carriers, including those which are substantial users of owner-operator equipment and oppose restrictions on trip-leasing, concede that upon the completion of a trip they assume no responsibility for the owner-operator, and, as some of the owner-operators either do not carry public liability and property damage insurance or are unable to obtain it, protection for the public may be lacking, as was pointed out in Costello v. Smith, supra. In such instances the opportunity is presented the owner-operator to engage in unlawful transportation, if he can obtain a shipment. It appears to be a not uncommon practice of haulers of exempt commodities to obtain traffic through direct solicitation of a shipper, and then to contact some authorized carrier having appropriate authority who will pay the highest compensation, and validate the transaction through a trip lease. Transportation under these circumstances by the owner-operator is, of course, unlawful, but the Bureau has experienced difficulty in obtaining evidence respecting such operations. Protection of the public through insurance is reduced, because certain carriers require owner-operators to bear a portion of the public liability and property damage insurance, and in some instances to assume part of the responsibility for cargo insurance and pay a portion of each loss and damage claim.

The testimony of owner-operators in this proceeding indicates that numerous carriers which utilize the service of such operators either sanction or require many practices that are incompatible with the duties and responsi- [fol. 134] bilities of the carriers. According to an official of an organization representing some 1,500 owner-operators in 21 States, principally in the eastern part of the country,

their lessee carriers generally require the owner-operators to deposit $100 per vehicle while in the employ of the carrier. The witness operated under an agreement whereby he paid the first $50 of each loss or damage claim. He understood that this was a uniform practice in the territory. In addition, the carriers which employ members of his organization withheld substantial amounts of compensation owing to the owner-operators. The owner-operators were also required to assign the titles to leased vehicles to the carriers while in the service of the latter.

The falsification of drivers' logs by owner-operators in order to cover up violations of our safety regulations appears not to be uncommon. This is reflected in the testimony of some 10 witnesses who were either owner-operators or former owner-operators, presented by the Teamsters Union. About 200,000 of the 1,000,000 members of this union drive vehicles in operations that are subject to our jurisdiction. All of these witnesses had driven for periods in excess of our hours-of-service requirements, ranging from 16 to 76 hours without adequate rest. They almost continuously overload their equipment, deferred necessary repairs because of lack of funds, and drove under extremely bad conditions. In addition, they practiced such economies as letting the trucks coast downhill in neutral gear in order to save fuel.

These owner-operators never disclosed violations of the hours of service, but instead falsified their daily logs so as to show only the permissible driving periods, and some of them were cautioned by representatives of the carriers by whom they were employed not to show too many hours spent driving. In one case overtime spent in truck maintenance and unloading was marked in the log as time off duty. This particular owner-operator worked for four different carriers, but only one ever checked his certificate of physical examination and none of the carriers ever inspected his equipment. He carried no public liability insurance because he could not afford it. The witness testified to having driven 29 hours without suitable rest on one occasion. [fol. 135] Others of these witnesses corroborated the testimony regarding the lack of inspection of equipment or of certificates of physical examination by the carriers which

employed them. The carrier for whom one of the witnesses worked never inspected the witness' equipment or checked it for flares, fuses, fire extinguishers, and other safety equipment. The owner-operator twice hauled explosives without having his equipment properly marked as being used for this purpose, as required by our regulations.

One of the witnesses who had been a truck driver for 25 years testified regarding his experiences as an itinerant owner-operator of a tractor-trailer for various carriers. His testimony respecting the failure of carriers to inspect his equipment, logs, or certificate of physical fitness, and the carriers' lack of control over his operations was similar to that of other witnesses. He continuously overloaded the equipment and was advised by his employing carriers as to the location of State weighing stations in order that he could avoid them. He produced copies of trip leases entered into with seven different authorized carriers. On one occasion at a so-called "truck-stop" in New Jersey, through an individual described as a broker, he obtained a load of freight for a shipper destined to Baton Rouge, La., and transported it to that point entirely on his own initiative and in the complete absence of any carrier's responsibility. He frequently gave a fee or present to dispatchers or terminal managers in order to obtain a profitable load of freight.

Most of the witnesses testifying had owned and driven power units only, for which they were compensated generally on a weight, mileage, or ton-mileage basis. All of them testified to earnings so low as to preclude proper maintenance of the equipment, and in practically all instances the equipment had been repossessed by a mortgagee or bank. All testified to their inability to properly service and maintain their equipment.

The household goods carriers in this proceeding, having nation-wide authority, oppose restrictions on leasing of equipment and contend that violations of law or our regulations in their leasing practices are negligible. Nevertheless, a witness on behalf of one such carrier reported three instances in which owner-operators of equipment under [fol. 136] lease to it had performed unauthorized trans-

portation. In two other instances, hauling agents for another nation-wide household goods carrier had issued bills of lading in the carrier's name and participated in the revenue from shipments transported by them without reporting the shipments or remitting therefor. The carrier subsequently ascertained that one of these agents twice had been convicted for performing unauthorized transportation in interstate commerce, and had been permanently enjoined from engaging in such operations.

The owner-operators represented in the proceeding and most of the carriers which utilize their services, particularly under trip leases, generally are in favor of the compensation for the equipment being based on a percentage of the gross revenue derived from the transportation. The preference is based on the alleged simplicity of the method, and the fact that it has been in vogue almost since the beginning of inter-city motor transportation. We are convinced from the record, however, that the principal reason this method of compensation is used is because the owner-operator quite naturally desires to earn as much as possible with his equipment. It is contended by carriers opposed to trip leasing, and not contradicted on the record, that the owner-operators prefer to transport truckloads of heavy-loading traffic. Those in favor of regulating the practices charge that carriers operating principally through owner-operators endeavor to avoid less-than-truckload traffic, leaving it to be transported by carriers which own the major part of their equipment. It is further claimed that the carriers which concentrate on truckload traffic and use owner-operators for its transportation, are able to maintain rates which are considered less than compensatory by other carriers. When tendered shipments at rates considered non-compensatory, many of these other carriers engage owner-operators under trip leases to perform the transportation.

It is clear that the use of owner-operator equipment in any important degree would have a tendency to distort a carrier's operating ratio, in that operating expenses such as maintenance, fuel, and others, are avoided. In making cost studies, and in general revenue cases, in con-

sidering operating ratios of a group of motor carriers, the data of carriers which operate principally with leased [fol. 137] equipment necessarily are excluded. The fact that wages generally are not segregated in the compensation paid owner-operators makes impossible a correct determination of the labor costs of such carriers.

It is argued on behalf of carriers which are important users of owner-operator equipment that the owner-operator generally takes better care of his equipment than does the company driver. This is disputed by many owner-operator witnesses, as previously indicated. It would appear difficult for an individual to maintain a single piece of equipment, or a tractor-trailer unit, more economically than a carrier, who is able to spread the maintenance cost over a great number of such units. A large carrier of general commodities located at New Haven, Conn., and operating between Boston, Mass., and Philadelphia, Pa., one of the most vigorous opponents of trip-leasing, contends that it is impossible for owner-operator equipment to be properly maintained. This carrier, which owns approximately 425 vehicles, operates a completely equipped maintenance shop, staffed by 80 employees, and capable of providing almost any truck repair or rebuilding operation, and also has mechanics stationed at all of its 10 terminals for making emergency repairs. The carrier also has a safety department and three employees who patrol its routes in order to check on its equipment and render assistance, when necessary, to the drivers. Its line-haul vehicles are equipped with tachographs, and violations of speed limits thereon reported are turned over to its personnel department for appropriate disciplining of the driver. Accident and sickness benefits and group insurance are provided for all its employees. It is the position of this carrier that without the kind of maintenance and supervision which it provides, a safe motor-carrier operation cannot be conducted. It is one of the carriers claiming to have lost truckload traffic to carriers which conduct operations principally with owner-operators.

The Director of the Bureau expressed the opinion that protection of the public is much better by carriers which own their vehicles than by those which rent all their equip-

ment, and this would appear to be true in the case of carriers which depend entirely upon providing transportation through trip leasing of owner-operator vehicles. [fol. 138] Where carriers own and maintain their own equipment there would appear to be less likelihood of failure to provide adequate insurance coverage for the protection of the public. As to whether owned or leased equipment has the best record for safe operation, however, there is considerable dispute. The Bureau made road checks of both for-hire and private-carrier vehicles for violations of our regulations, particularly the safety regulations, for the six months ending September 15, 1948. The violations were segregated between owned and leased vehicles, and in the same five regions of the country that were used in ascertaining the importance of leasing. In southern territory the percent of owned vehicles in violation was 94, compared with 93.6 of leased vehicles. In all other regions, however, a greater percent of leased vehicles was in violation, but, except in the middle west, the differences in percents are not significant and the number of leased vehicles checked was much less than the number of owned vehicles. For example, in the Pacific and Intermountain States, where 85 percent of leased vehicles were in violation, as compared with 79.8 percent of owned vehicles, 330 leased vehicles were checked as compared with 1,217 owned vehicles. In general, the percent of vehicles in violation of our requirements respecting the keeping of drivers' logs, and maximum permissive daily or weekly driving hours, was somewhat greater in the case of leased vehicles in all parts of the country except the Pacific Coast and Intermountain territory, where the difference was so slight as not to be significant. It was impossible to make proper checks as to these violations where the drivers' logs were not kept or were improperly kept. As previously indicated herein, many owner-operators of vehicles under lease to carriers, when checked on the highway for compliance with our regulations, do not explain that the vehicle is under lease to the carrier under whose authority it is being operated.

In the case of hauls by owner-operators under trip lease between terminals of the lessee carrier, a check on the

safety compliance of the lessor while the lease is effective is possible, but this is not true in the case of owner-operators performing service for irregular-route carriers, when the haul is completed at a point that is not a terminal. It [fol. 139] should also be noted that in the case of the private carriers checked by the Bureau the percent of owned vehicles showing violations of the requirements respecting drivers' logs was much greater than the percent of leased vehicles in violation.

The respondents that utilize the equipment of owner-operators deny that accidents are any more numerous in the case of such equipment than where owned equipment is operated. Four large motor common carriers of general commodities compared the over-the-road highway accidents of their company drivers and their hired owner-operators that were chargeable to the drivers. The ratio of such accidents per 100,000 miles, leased compared with owned equipment, ranged from 0.39 and 0.46 percent for one carrier to 1.5 and 3.8 percent for another. The ratios of one carrier for nine months in 1948 were 0.62 percent for the leased equipment and 0.60 percent for the company-owned equipment.

The representative carriers herein which oppose restrictions on trip leasing of owner-operator equipment, and support in principle the rules prescribed by division 5, in general do not attempt to evade their responsibility contractually for leased equipment operated in their service, but there are many exceptions. One large carrier domiciled in California, in its contracts with owner-operators of tractors, of whom it hires between 60 and 70, refers to them as "sub-haulers" or "contractors." In the contract these owner-operators assume responsibility for $500 of any actual loss, and the contract provides that the operation of the equipment is at no time under the direction or control of the carrier, and that the driver of the "contractor's" equipment is not in the carrier's employ.

One large household goods carrier having operating authority in 38 States and the District of Columbia and providing service wholly through owner-operator hauling agents, refers to its owner-operator as a "truckman" and the contract contains no provision for assumption by the

lessee of carrier responsibility. The contract of another nation-wide carrier of household goods with its owner-operators, also omits any provision for the assumption of such responsibility.

[fol. 140] Some 17 of the States [2] regulate in some degree the leasing or interchange of equipment by motor carriers, and many others apparently control these practices through regulations covering the licensing of motor-carrier equipment, provisions for special permits for substitution of licensed equipment in emergencies, and other requirements.

Under a regulation of the Department of Transportation of State of Washington, in effect since 1935, the driver of a leased vehicle must be an employee of the carrier, and trip- or short-term leases, are not permitted. Any lease must be approved by the department, and its agents located throughout the State are authorized to grant such approval. Household goods carriers supply the department with lists of their leased vans, and if one of such vehicles is brought into the State, the department is notified, and may authorize its operation over the highways of the State by a telegram. The department urges the adoption by us of regulations similar to those proposed by the examiner, particularly the 30-day minimum lease period.

The Wisconsin Public Service Commission recommends that we prescribe regulations which would require that leases be in writing and apply for a substantial period; that compensation based on a percentage of the revenue and subleasing be prohibited, and that the lessee assume full responsibility for and control of the leased equipment.

We conclude that the foregoing summary of some of the practices of the authorized carriers in leasing equipment indicates that many of such practices have facilitated violations and evasions of law and of our regulations, and militate against sound regulation of motor carriers. It is, nevertheless, argued by many of the parties that we need only enforce existing laws and our regulations thereunder

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[2] Arizona, Colorado, Connecticut, Florida, Georgia, Kansas, Michigan, Missouri, Nebraska, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Texas, Washington, and Wisconsin.

in order to eliminate the bad practices that accompany many phases of leasing. According to these parties, vigorous enforcement of the law and of our present regulations would render unnecessary the prescription of additional [fol. 141] rules and regulations. We do not agree with this argument. As indicated, at present, leasing is in many instances conducted in a loose and informal manner, and this is aided by the lack of any requirement that lease arrangements be reduced to writing. When an itinerant owner-operator obtains a shipment and then attempts to validate the transportation through a later arrangement with an authorized carrier, he is performing unauthorized transportation. If the carrier agrees to the arrangement, however, and permits the vehicle of the owner-operator to be identified as in the carrier's service, it is obvious that prosecution for unlawful transportation is rendered extremely difficult. There are many arrangements that are on the border-line between unlawful practices and those that have been permitted for lack of any definition of legal leasing, although not always approved.

Under present conditions, it is obviously impossible for our enforcement staff to advise carriers respecting leasing arrangements which are lawful and those which are unlawful. The carriers themselves have no guide as to the practices that are legal. It clearly is our duty to prescribe rules governing the practices with a view to informing the carrier as to what they may and may not do. When the parties to an arrangement that appears to be unlawful, claim the existence of an oral lease, it is difficult, if not impossible, to provide that the transportation is unauthorized.

We conclude that the record herein warrants the prescription by us of reasonable rules and regulations governing the practices of authorized carriers in augmenting their equipment other than by purchase and in the interchange of equipment, provided we have authority under the act to make such prescription. We proceed to consider the issue of jurisdiction.

JURISDICTION

It is argued by some of the parties herein that we lack jurisdiction to prescribe any rules and regulations governing the leasing and interchange practices of motor carriers, and others contend that we may not go beyond the rules advocated by A. T. A. and those prescribed by division 5, or similar rules. Many of the parties take the [fol. 142] position that the prescription of rules and regulations governing the practices under consideration invades the province of carrier management, and is unconstitutional. We do not consider the court decisions cited in support of the argument respecting the constitutional question relevant to the issue of our jurisdiction to regulate these practices.

The regulation of motor carriers, as well as of rail carriers, water carriers, and freight forwarders is subject to the national transportation policy, which commands the fair and impartial regulation of all modes of transportation subject to the act, and indicates a Congressional intent to promote safe, adequate, economical, and efficient service, and to foster sound economic conditions in transportation and among the several carriers; and to encourage fair wages and equitable working conditions; and we are required to administer and enforce all the provisions of the act with a view to carrying out this Congressional policy. Regulation of motor carriers under part II of the act has been committed to us in broad general terms, and, under principles applied by the courts to this as well as other administrative agencies, it is left to us to "fill up the details" by the establishment of such reasonable rules and regulations as may be necessary. United States v. Grimaud, 220 U. S. 506. It is true that the motor provisions of the act, at least since the Transportation Act of 1940, do not refer specifically to the leasing of equipment by such carriers. That is true also with respect to many other aspects of regulation of the carriers that are subject to our jurisdiction. We have not, however, hesitated to exercise the powers that could reasonably be inferred from the provisions of the act in order to implement effectively the Congressional intent, and to "fill up the details" of regu-

lation. In so functioning we have been guided by the reasoning set forth by division 5 in the prior report herein, as follows:

> We have long recognized that in carrying out what we conceive to be the legislative intent, we cannot exercise powers which are neither expressly delegated nor reasonably necessary to effectuate powers that are expressly delegated. Kansas City S. Ry. Co. v. Kansas City Term. Ry. Co., 211 I. C. C. 285, and 304. The converse of this rule, of course, is that we [fol. 143] have authority that can reasonably be inferred from the provisions of the act, in order to effectuate powers expressly delegated thereunder, and in numerous proceedings this Commission has found that its jurisdiction reasonably could be inferred in respect of powers not specifically mentioned in legislative grants. Among such proceedings are Contracts of Contract Carriers, 1 M. C. C. 628, in which it was found that this Commission has authority to require motor contract carriers to perform transportation under contracts or agreements in writing and which conform to certain prescribed essentials; Keystone Transp. Co. Contract Carrier Application, 19 M. C. C. 475, in which it was found that under section 209 (a) of the act, this Commission has authority to specify in a permit of a contract carrier, "the commodities to be transported, the equipment to be used, and any other specifications necessary to describe the service authorized"; Bell Potato Chip Co. v. Aberdeen Truck Line, 43 M. C. C. 437, wherein it was concluded that despite the omission of specific reparation provisions from part II of the act, damages on account of an unreasonable rate were not recoverable without a determination by the Commission of "what was the reasonable rate whereby they may be measured"; Investigation of Seatrain Lines, Inc., 206 I. C. C. 328, (also related proceedings, Seatrain Lines, Inc., v. Akron, C. & Y. Ry. Co., 226 I. C. C. 7, 243 I. C. C. 199, and Hoboken Mfrs. R. Co. v Abilene & S. Ry. Co., 237 I. C. C. 97, and 248 I. C. C. 109), affirmed by the Su-

preme Court in United States v. Pennsylvania R. Co., 323 U. S. 612, in which it was found that where through routes existed between rail and water carriers the Commission could require the rail carriers to interchange cars with the water carriers; Keith Ry. Equipment Co. v. The Asso. of American Railroads, 274 I. C. C. 469, in which it was found that this Commission has jurisdiction to pass on the reasonableness of compensation paid for the use of freight cars owned by non-shippers in the past as well as for the future; and Transportation Activities, Brady Transfer & Storage Co., 47 M. C. C. 23, (sustained 80 F. Supp. 110, affirmed 335 U. S. 875), wherein criteria were set forth whereby regular, and irregular-route operations may be distinguished. In all these proceedings, and in many others, in which powers have been exercised which are not especially spelled out in the act, the Commission, as an administrative agency, has fulfilled its obligation to fill out the details of the regulation committed to it, long recognized as a prerogative of such agencies. In sustaining the Commission's order in the Seatrain case, supra, the Supreme Court, at page 616 [fol. 144] of its report in United States v. Pennsylvania R. Co., supra, said:

There is no language in the present act, which specifically commands that railroads must interchange their cars with connecting water lines. We cannot agree with the contention that the absence of specific language indicates a purpose of Congress not to require such interchange. True, Congress has specified with precise language some obligations which the railroads must assume. But all legislation dealing with this problem since the first act in 1887, 24 Stat. 379, has contained broad language to indicate the scope of the law. The very complexities of the subject have necessarily caused Congress to cast its regulatory provisions in general terms. Congress has, in general, left the contents of these terms to be spelled out in particular cases by administrative and judicial action; and in the light of the Congressional purposes to foster an efficient and fair transportation system.

The parties who contend that we lack jurisdiction to adopt rules governing the practices under investigation stress the fact that we can exercise implied powers only in order to effectuate powers that are expressly delegated, and other parties, although conceding that our authority to regulate interstate motor carriers is comprehensive, argue nevertheless that the act contains no delegation of authority, either express or implied, over the practices under consideration, or any statutory warrant for subjecting them to regulation. They review the various provisions of part II of the act, including those cited in the order instituting the investigation, and, in addition, section 204 (c), not cited therein, and argue that there is a complete absence in such provisions of any legislative grant of authority to regulate the practices of the respondents in augmenting or interchanging equipment. The Household Goods Carriers' Conference contends that section 202 (a), which gives us general regulatory jurisdiction over transportation by motor carriers in interstate commerce does not confer any specific powers in respect of leasing practices. We think this contention is clearly untenable. Although the language in that section is general in tenor, it is clear and explicit in respect of the scope of regulatory power conferred, and in that respect goes beyond the gen- [fol. 145] eral regulatory powers in respect of rail carriers provided in section 1 of part I of the act. Section 202 (a) provides as follows:

> The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

In considering this provision it should be noted that the quoted section, as it appeared in the Transportation Act of 1940, was unchanged from section 202 (b) of the Motor Carrier Act, 1935. When the latter statute was under consideration, Congress was advised respecting the

operations conducted in non-owned vehicles by the report of the Federal Coordinator of Transportation, entitled "Regulation of Transportation Agencies" (Sen. Doc. 152—73rd Congress, 1st sess.). In hearings on the bill which was enacted as the Motor Carrier Act, 1935, doubt was expressed as to the legal status of the parties to hiring arrangements under which vehicles were driven by the owner or his employee for another party engaged in holding out the service to the public and in arranging for the transportation. The question was whether the owner-operators would be the carriers, and those hiring their services or leasing their equipment would be brokers or freight forwarders, or whether the latter would be the carriers and the owner-operators their agents. See Hearings Before the Committee on Interstate Commerce, U. S. Senate, 74th Congress, 1st Sess., S. 1629, pages 97 to 99, and 155 and 156. The language respecting the procurement of, and the provision of facilities for, transportation by motor carriers in interstate commerce, contained in section 202 (b) of the Motor Carrier Act, 1935, was added by the Senate committee, and, in explaining the addition, the chairman of the committee stated (79th Congressional Record, Page 5650):

> Paragraph (b) * * * Explains the application of the bill and vests jurisdiction in the Interstate Commerce Commission. The Committee amendments broaden [fol. 146] the statement to include the operations of brokers which are regulated by later provisions of the bill, and of persons who as lessors of vehicles or otherwise may engage in transportation as common or contract carriers.

We also observe that to the definitions of a common and a contract carrier in the Motor Carrier Act, 1935, as one "who undertakes to transport * * *," there was added the language "whether directly by a lease or by any other arrangement," which was explained at the time as intended to check evasion of the act by bringing within its terms such transportation operations as were performed through the leasing of motor vehicles or other similar arrangements. Although the quoted language was eliminated in the defini-

tions of a common and a contract carrier adopted in the Transportation Act of 1940, it has been held that the elimination was in the interest of clarity and was not intended to evidence any change in legislation intent. Thomson v. United States, supra. As we construe section 202 (a), the regulation of transportation [of property by motor carriers engaged in interstate commerce], which elsewhere, [section 203 (a) (19)], together with "services," is stated to include "all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership, or of contract, express or implied," and of the procurement thereof, and the provision of facilities therefor, is vested in the Interstate Commerce Commission. Stated somewhat differently, the section vests in us the regulation of transportation of property by motor carriers in interstate or foreign commerce. Transportation includes all vehicles operated by, for, or in the interest of any motor carrier, irrespective of ownership, or contract, express or implied. In addition we are given regulation of the procurement of such transportation. Unless an unduly strained and narrow construction is to be given "procurement," it must include methods of procurement, and since transportation includes vehicles, we have authority to regulate the methods of procurement of vehicles used by the carriers subject to our jurisdiction. To find otherwise is to treat the language as superfluous and to fail to accord effect to the legislative intent therein expressed.

[fol. 147]. We believe that it was Congress' intent, where "provision of facilities" last appears in section 202 (a), to include "of" before "the provision," so that "regulation of the provision of facilities" for motor-carrier transportation, is specifically vested in this Commission, as well as regulation of the transportation, and of the procurement of transportation. Unless so construed there is irrelevantly added to a clause dealing with regulation, the phrase: "The provision of facilities for such transportation is vested in the Interstate Commerce Commission."

We conclude that we have been given ample authority to regulate the leasing practices of the motor carriers subject to our jurisdiction under part II of the act, and to promulgate rules and regulations to be observed by the

carriers under section 204 (a) (6), which gives us authority:

> To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; * * *. Some of the parties argue that this section is merely procedural and in that respect comparable with sections 12 (1) and 17 (3) of part I. The latter section specifically relates to procedure before this Commission. Section 12 (1) states generally our authority to enforce and execute the provisions of part I, but grants specific powers, in contrast to the broad authority conferred by section 204 (a) (6). As stated by division 5, in Contracts of Contract Carriers, supra:
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> > The broad power to prescribe rules, regulations, and procedure necessary for the proper and effective administration of the provisions of the act was intended to be put to practical use.

Our authority to prescribe reasonable rules and regulations under this section was recognized by the Supreme Court in United States v. Resler, 313 U. S. 57.

Although authority to regulate interchange practices of motor common carriers is not specifically set forth in the act, it would appear that such authority is a necessary concomitant of the authority to enforce the provisions of part II relating to such carriers. They do not have the duty of establishing through routes and joint rates with other carriers, as do common carriers of passengers by [fol. 148] motor vehicle, but they have the privilege of establishing such routes and rates, and, under section 216 (c), of the act, in the case of joint rates, it is the duty of the common carriers parties thereto, to establish just and reasonable regulations and practices in connection therewith. Among the other duties of such carriers, stated in section 216 (b) of the act, is the duty to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to, among other matters, "the facilities for transportation and all other mat-

ters relating to or connected with the transportation of property in interstate or foreign commerce." We conclude that our power to enforce this duty is adequate to regulate the practices of the carriers of property relating to the interchange of facilities over through routes that are voluntarily established, in order to prevent unlawful extensions of operating authority and other violations of part II, that would be possible under the cloak of purported interchanges, as well as under the guise of leasing.

One further jurisdictional objection remains to be considered. The Manufacturing Chemists' Association and the Household Goods Carriers' Conference argue that the proceeding was not conducted in accordance with the Administrative Procedure Act, because the Director of the Bureau, when testifying in support of regulation of the practices under consideration, did not on the record advocate any specific rules or regulations to govern such practices. Specifically, it is contended that section 7 (c) of the Administrative Procedure Act, relating to evidence, has been violated. In substance, that section provides, among other matters, that the proponent of a rule or order shall have the burden of proof. On brief, the Bureau took a definite position, and now advocates the adoption of certain specific rules. In developing the record herein, we have had the assistance of many of the parties; some assuming a burden of proof with respect to certain rules and not others. We do not understand that in rule-making investigations conducted under the statute which we administer we are required to assume the entire burden of proof. In any event, as we understand it, there is also a burden resting upon those opposed to the promulgation of rules and regulations such as those contemplated herein. We conclude that there [fol. 149] has been compliance with the Administrative Procedure Act; that the arguments relative to the burden of proof are without foundation, and that the record is sufficiently ample to justify the prescription by us of reasonable rules and regulations.

The final argument by the proponents of regulation herein is that we are precluded from prescribing regulations respecting the augmenting of equipment by authorized carriers by sections 208 (a) and 209 (b) of the act.

These sections contain provisos, relating respectively, to common and to contract carriers, to the effect that no "terms, conditions, or limitations" to be attached at the time of issuance, and from time to time thereafter, to certificates of common carriers and to permit of contract carriers, "shall restrict the right of the carrier to add to his or its equipment and facilities," as the development of the business and the demands of the public shall require. It is argued that if any rules that might be prescribed should have the effect of restricting a carrier's use of non-owned equipment in any respect, we would be accomplishing indirectly that which we are forbidden to do by the provisions referred to. These provisions, as indicated, relate only to the attachments of terms, limitations, or conditions to certificates or permits. We have never included in grants of authority any restrictions upon the number of vehicles to be operated, although our authority to impose restrictions against certain types of equipment has been sustained. Crescent Exp. Lines, Inc., v. United States, 320 U. S. 401. Reasonable rules respecting the augmenting of equipment by a carrier in a manner consonant with the provisions of the act and of our regulations thereunder could not, in our opinion, be construed as having the effect of restricting a carrier's right to add to its equipment and facilities. We find no merit in the argument that prohibitions against the prescription of reasonable regulations are contained in sections 208 (a) and 209 (b).

With a view to determining the nature of the regulations that should be prescribed, we consider next the practices of the carriers in leasing or interchanging equipment, so far as disclosed by the record.

[fol. 150] LEASING AND INTERCHANGE PRACTICES

Regular-Route Common Carriers. A number of these carriers conduct operations wholly or in part in leased equipment, and with minor exceptions, contend that trip-leasing is an economic necessity. Those whose methods are described on the record are substantial carriers with gross annual revenues ranging up to $9,000,000 in the case of one carrier operating principally in central territory.